IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 371 OF 2006.

Mr. Alwyn D'Cunha,
r/o Malwara, Pillar,
St. Lawrence, Agacaim,
Tiswadi, Goa. .... Petitioner.

Versus

1. Village Panchayat of St.
Lawrence-Agacaim,
Agacaim, Tiswadi, Goa.

2. Smt. Quiteria Rodrigues,
r/o H. No. 793/10,
Fr. Agnelo Colony Malwara,
Pillar, Tiswadi, Goa.

3. The Additional Director of
Panchayats (I), Govt. of Goa,
Panaji, Goa. .... Respondents.

Shri Nigel Costa Frias, Advocate for the Petitioner.

Mr. A. Palekar, Advocate for the Respondent No.1.

Mr. D. Pangam, Advocate for the Respondent No.2.

Mr. S. Vahidulla, Addl. Govt. Advocate for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 6th SEPTEMBER, 2006.

ORAL ORDER:

Heard.

2. The petitioner challenges the Order dated 4.7.05 passed by the Additional Director of Panchayats in Panchayat Appeal No. 28/2005 whereby the application filed by the petitioner for his intervention in the said appeal has been dismissed. The challenge to the impugned order is on the ground that the proceedings against the appellant in the said appeal were initiated by the Village Panchayat consequent to the complaint filed by the petitioner and the complaint apparently disclosed that the construction carried out by the appellant in the said appeal was in the property belonging to the petitioner and in an area reserved for road widening and that therefore the petitioner is a necessary party to the appeal proceedings and hence his application for intervention should have been allowed.

3. The learned Advocate appearing for the petitioner submitted that undisputedly the proceedings were initiated at the instance of the petitioner and consequent to the complaint filed by the petitioner against the illegal construction done by the respondent no.2 herein. The Panchayat consequently had directed demolition of such construction which was sought to be challenged by way of appeal and in appeal the appellate authority had granted stay to the order of the Panchayat and therefore the appellate authority ought to have allowed the petitioner to intervene in the matter.

4. The learned Advocate appearing for the respondent No.2 on the other hand referring to the decision in ***Shyam Fatechand Shende and another v. Alka w/o Vinod Ganvir and another*** reported in **[1998 (1) Mh.L.J. 410]** submitted that the petitioner had no locus to intervene in the appellate proceedings as the same relate to the alleged illegal construction done by respondent No.2 and it is a matter between respondent No.2 and the Panchayat authority. In case the construction in any way affects the right of the petitioner, remedy for him lies somewhere else. Attention was also drawn to Section 239A of the Goa Panchayat Raj Act, 1994 while submitting that the Director who is the appellate authority under the said Act is not empowered to entertain applications by strangers to the proceedings and the powers under Order 1, Rule 10 C.P.C. are not available to such authority.

5. It was also sought to be contended on behalf of the petitioner that the petitioner apprehends attempt on the part of the Panchayat to grant regularization of the illegal construction to the detriment of the interest of the petitioner and therefore the petitioner's presence before the appellate authority and before the appeal is disposed of is absolutely necessary. The same was sought to be countered on behalf of the respondent in submitting that the issue of regularization is not the subject matter of the appeal and for the purpose of regularization a certain procedure is prescribed which is

required to be followed and it is pointed out that the respondent No.2 has not resorted to any such procedure. Besides, the apprehension is clearly an afterthought and no such grievance was made even in the complaint filed by the petitioner. As regards the failure on the part of the petitioner to make grievance about the possibility of regularization, that cannot be of any relevancy to decide the point regarding necessity of joinder of parties to the proceedings at the appellate stage. However, as rightly submitted by the learned Advocate for the respondent, once the issue of regularization is not the subject matter of appeal and in that regard there is procedure prescribed by law and no initiative has been taken by the respondent in that regard till this day, the apprehension of the petitioner that in the appeal proceedings the Panchayat may grant regularization of the alleged construction appears to be without any substance. Once it is clear that the apprehension on the basis of which the petitioner was seeking intervention in the appeal is no more sustainable, the question of allowing the petitioner to intervene in the appeal does not arise. Besides, merely because the petitioner had filed a complaint regarding the construction to be illegal and on the basis of such complaint, the Panchayat had initiated proceedings against respondent no.2 that does not entitle the petitioner to seek intervention in the proceedings initiated by the Panchayat either at the original stage or at the appellate stage. In order to justify this intervention, the petitioner has to show that his rights will be affected in some manner on

account of decision that may be passed in the proceedings and if the petitioner is able to disclose the same, nothing would prevent the appellate authority to allow the petitioner to be joined as the party to the appellate proceedings. Section 239A of the said Act cannot debar the authority from allowing the aggrieved person to put forth his say in the matter. The said statutory provision cannot be read totally ignoring the basic principles of natural justice. An authority which is empowered to adjudicate rights of the parties cannot ignore the basic principles of natural justice albeit, when the statutory provision prescribes specific procedure, the same needs to be followed. No order can be allowed to be passed by any authority which can affect rights of the parties without giving such party an opportunity of being heard in the matter. Section 239A speaks about powers of the appellate authority while dealing with appeals, but that does not mean that it will debar the authority from entertaining the application for intervention by a person who can be aggrieved by an order which may be passed in such appeal proceedings. Be that as it may, in the case in hand once it is disclosed that apart from the apprehension that the Panchayat may grant regularization, there was no other cause to justify intervention of the petitioner and since that apprehension is without any substance no fault can be found with the impugned order rejecting the application of the petitioner for intervention in the matter in hand. Needless to say this will not come in the way of the petitioner to challenge in appropriate proceedings the order

that may be passed by the appellate authority in case it happens to be adverse to the interest of the petitioner.

6. With the above observations, the Writ Petition is disposed of.

R. M. S. KHANDEPARKAR, J.

sl.